

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JAN 13

CLERK, U.S. DISTRICT COURT

By _____ Deputy

DANIEL HALL,

§

§

Movant,

§

§

VS.

§

NO. 4:09-CV-497-A

§

(NO. 4:07-CR-003-A)

UNITED STATES OF AMERICA,

§

§

Respondent.

§

MEMORANDUM OPINION

and

ORDER

Came on to be considered the motion of movant, Daniel Hall ("Hall"), under 28 U.S.C. § 2255 to vacate, set aside, or correct sentence. Having reviewed the motion, the government's response, the record, and the applicable legal authorities, the court concludes that the motion should be denied.¹

I.

Background

On May 4, 2007, Hall pleaded guilty to count six of the superseding indictment, charging him with one count of possession of a controlled substance with intent to distribute in violation

¹In conjunction with the motion to vacate Hall also filed a motion to proceed in forma pauperis. As no filing fee is required for filing a motion pursuant to 28 U.S.C. § 2255, the motion to proceed in forma pauperis is denied as moot. See Rule 3 of the Rules Governing Section 2255 Proceedings in the United States District Court, advisory committee's notes. ("There is no filing fee required of a movant under these rules.").

of 21 U.S.C. § 841(a)(1) and (b)(1)(B). The court on August 24, 2007, sentenced Hall to 262 months' incarceration, to be followed by a term of supervised release of five years. Hall timely appealed, and the Fifth Circuit affirmed his conviction and sentence on April 23, 2008. United States v. Hall, 275 F. App'x 343 (5th Cir. Apr. 23, 2008). The Supreme Court denied Hall's petition for writ of certiorari on October 6, 2008. Hall timely filed the instant motion.

II.

Grounds of the Motion and Analysis

Hall contends that he was denied effective assistance of counsel that rendered his guilty plea unknowing and involuntary because his counsel failed to inform him of the consequences of his plea, failed to object to the enhancements used by the court to increase his sentence, and advised him to testify on his behalf which resulted in a three-point increase for obstruction of justice.

To prevail on his ineffective assistance of counsel claim, Hall must show that (1) his attorney's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.

Strickland v. Washington, 466 U.S. 668, 688, 694 (1984). Both prongs of the Strickland test must be met to demonstrate ineffective assistance. Id. at 687. Further, "[a] court need not address both components of an ineffective assistance of counsel claim if the movant makes an insufficient showing on one." United States v. Stewart, 207 F.3d 750, 751 (2000). In the context of a guilty plea, in order to prove prejudice, Hall "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985). Judicial scrutiny of this type of claim must be highly deferential, and the movant must overcome a strong presumption that his counsel's conduct falls within the wide range of reasonable professional assistance. Strickland, 466 U.S. at 689.

Hall claims his guilty plea was unknowing and involuntary because his attorney failed to inform him of the consequences of his plea, advised him that whether or not he testified he would still receive a three-level reduction for acceptance of responsibility, and failed to apprise him as to the quantity of drugs that would be attributed to him at sentencing and the length of sentence he would receive.

For a guilty plea to be knowing and voluntary, the defendant

must have "a full understanding of what the plea connotes and of its consequence." United States v. Hernandez, 234 F.3d 252, 255 (5th Cir. 2000) (internal quotations and citations omitted). However, "[t]he defendant need only understand the direct consequences of the plea; he need not be made aware every consequence that, absent a plea of guilty, would not otherwise occur." Id. (internal citations omitted). "The consequences of a guilty plea, with respect to sentencing, mean only that the defendant must know the maximum prison term and fine for the offense charged." Ables v. Scott, 73 F.3d 591, 592 n.2 (5th Cir. 1996) (internal quotations omitted). The defendant's representations, as well as those of his lawyer and the prosecutor, and any findings by the judge in accepting the plea, "constitute a formidable barrier in any subsequent collateral proceedings." Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Solemn declarations in open court carry a strong presumption of truthfulness, and a defendant bears a heavy burden to show that the plea was involuntary after testifying to its voluntariness in open court. Deville v. Whitley, 21 F.3d 654, 659 (5th Cir. 1994).

The record here squarely contradicts Hall's claims. At his rearraignment Hall waived the reading of the indictment, but

testified that before signing the factual resume and plea agreement he read each one, understood what each document was before he signed it, discussed the legal significance of them with his attorney, and discussed with his attorney how the sentencing guidelines might apply in his case. Rearrangement Tr. at 7, 12-13. Hall stated in open court that he entered into the plea agreement voluntarily and of his own free will, and the court expressly found the plea was knowing and voluntary. Id. at 20, 23. Under these facts, it is clear that Hall knew the consequences of his plea as contemplated by Fifth Circuit, and the court cannot now conclude that Hall's plea was anything other than knowing and voluntary.

Hall also claims his attorney advised him that whether or not he testified at sentencing he would still receive a three-level reduction for acceptance of responsibility. Again, the record contradicts Hall's claims. Prior to Hall testifying at sentencing his counsel confirmed in response to the court's questioning that he had apprised Hall that false testimony could result in a two-level increase in his offense level, that by testifying Hall would enhance his risk of losing acceptance of responsibility, and that testifying falsely could significantly

increase his sentence. Sentencing Tr. at 5. Hall's claim is without merit.

Hall also claims his counsel misinformed him as to the length of sentence he could receive and as to the amount of drugs that would be attributed to him at sentencing. At rearraignment Hall testified that he understood "exactly" the charge against him, that he and his attorney had discussed how the sentencing guidelines might apply to his case, that he understood the penalties to which he would be subjecting himself by pleading guilty, and that he had received no guarantees or promises as to any sentence the court might impose. Rearraignment Tr. at 7, 16-17, 19. Hall further testified at rearraignment that he understood the court was not bound by any facts stipulated to between Hall and the government, and that the court could impose punishment that might disregard stipulated facts or take into account facts to which Hall had not stipulated. Id. at 7. Hall's unsubstantiated assertions in his motion fail to show counsel rendered ineffective assistance.

Hall also contends that his counsel rendered ineffective assistance for failing to object to the enhancements to his sentence and that such enhancements, rendered by the court on its own findings of fact without a jury, violated the requirements of

United States v. Booker, 543 U.S. 220 (2005). Contrary to Hall's argument, Booker does not "impede a sentencing judge from finding all facts relevant to sentencing," and the court may make such factual findings under a preponderance of the evidence standard.

United States v. Duhon, 541 F.3d 391, 396 (5th Cir. 2008)

(quoting United States v. Mares, 402 F.3d 511, 519 (5th Cir.

2005)). "[A] sentence falling within a properly calculated

guideline range . . . is presumptively reasonable." United

States v. Cisneros-Gutierrez, 517 F.3d 751, 766 (5th Cir. 2008).

Here, the court properly accepted the findings of the presentence report, including a finding of the quantity of drugs now challenged by Hall. The court also found the range of imprisonment to be 262 to 327 months, and sentenced Hall at the bottom of the guideline range to 262 months imprisonment. Hall's sentence is presumptively reasonable. Hall has adduced nothing as would show that but for the result of counsel's errors the proceeding would have been different or that he would not have pleaded guilty and would have insisted on going to trial.

III.

ORDER

Therefore,

The court ORDERS that Hall's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 be, and is hereby, denied.

Pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, Rule 11(a) of the Rules Governing Section 2255 Proceedings in the United States District Court, and 28 U.S.C. § 2253(c), for the reasons discussed herein, the court further ORDERS that a certificate of appealability be, and is hereby, denied, as Hall has not made a substantial showing of the denial of a constitutional right.

SIGNED January 13, 2010.



JOHN MCBRYDE
United States District Judge